

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

IN RE:

JOHNNY E BARNES
PO BOX 523
SAN AUGUSTINE, TX 75972
xxx-xx-0866

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* Case No. 19-90163
* Chapter 13
*
*
*

<Debtor>

MOTION TO DISMISS FOR INFEASIBILITY AND SETTING HEARING

The Trustee requests this Court to set this Motion for hearing on the 17th day of September, 2020, at 10:00 am in the UNITED STATES BANKRUPTCY COURT, 300 WILLOW SUITE 112, BEAUMONT, TX

To the Honorable Judge of Said Court:

Comes Now, Lloyd Kraus, Chapter 13 Trustee, and files this his Motion to Dismiss for Infeasibility and Setting Hearing filed in the above styled case and for cause would show the following:

1. **Jurisdiction:** The Court has jurisdiction over this proceeding in accordance with 28 U.S.C. §§ 157 and 1334. This is a core proceeding according to 28 U.S.C. § 157(b).
2. **Dismiss Case for Infeasibility:** The Trustee requests this case be dismissed pursuant to the provisions of 11 U.S.C. § 1307(c)(1) and 11 U.S.C. § 1307(c)(6) based upon infeasibility of the confirmed Plan as set forth below and that such infeasibility constitutes a material default of a term of the Plan and the Trustee asserts that such dismissal is in the best interests of the Creditors.
3. **Infeasible:** The Chapter 13 Plan as filed by the Debtor¹ and confirmed by the Court is or has become infeasible for one or more of the following reason(s) as checked below:
 - () **Underfunded:** The confirmed Plan is underfunded in that the sum of the plan payments paid and/or to be paid to the Trustee is insufficient to pay all of the claims and administrative fees that the Trustee must pay under the terms of the Plan..
 - () **Certain Claims cannot be Reconciled with Plan:** The following claims as set forth in the Plan cannot be reconciled with the actual claims as filed by the underlying creditors for the reasons as set forth in Schedule L of the Trustee's Reconciliation of Claims: **[List names of claimants from Schedule L]**

¹ The use of the singular term "Debtor" in this Motion to Dismiss includes both Debtors when the case has been initiated by the filing of a joint petition by spouses.

() **Priority Claim Not in Plan:** The Plan fails to provide for the full payment of the following priority claims pursuant to 11 U.S.C. § 1322(a)(2): **[List names of priority claimants]**.

() **506 Claim not fully provided for in the Plan (applicable only to 2006 version of TXEB Form Plan):** The Plan fails to fully provide for the payment of the secured amount of the following 506 claims and collateral value has not otherwise been established by agreement or Court Order: **[List names of creditors whose secured claim amount is greater than the cram down value being paid in the plan]**

(x) **No allowed claims filed for the following Claimants to be paid under the terms of the confirmed Plan:** Aaron's; Conn's

() **Other Grounds to dismiss the case:** **[List other grounds, if any, to dismiss the case]**

4. **Only applies if checked off:**

(x) **Dismiss Case for Failure to Make Plan Payments:** The Trustee requests this case be dismissed pursuant to the provisions of 11 U.S.C. § 1307(c)(1) based upon the failure of the Debtor to make plan payments and the Trustee asserts that such dismissal would be in the best interests of the Creditors.

Amount of arrearage in Plan Payments: The Debtor is in arrears in the amount of **\$2,775.00** as of 7/23/2020 plus any additional plan payments that come due between that date and the hearing date noted above.

Bringing Plan Payments Current Prior to the Hearing: To prevent the dismissal of this case, the Debtor may bring the plan payments current by making payments by one of the acceptable options as set forth on the Trustee's website in sufficient time for the payment to post prior to the Court hearing.²

² See the various payment options at the Trustee's website at <http://ch13tyler.com> under the tab on the left of the screen entitled "Debtors".

WHEREFORE, PREMISES CONSIDERED, the Trustee requests that this case be dismissed based upon the grounds as set forth herein; that any funds remaining on deposit with the Trustee shall be distributed to the Debtor upon the dismissal of this case per *Viegelahn v Lopez (In re Lopez)*, 2018 WL 3626628 at *5-6 (5th Cir. July 31, 2018); and that the Trustee be given such other relief that the Trustee may show himself entitled.

Respectfully submitted,

Lloyd Kraus, Chapter 13 Trustee

/s/ Lloyd Kraus

Lloyd Kraus, Chapter 13 Trustee SBN 24066773

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Tyler, TX 75702

(903) 593-7777; FAX (903) 597-1313

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion to Dismiss and Setting Hearing has been served upon the following parties in interest by mailing a copy of same to them via first class mail or electronically on 7/23/2020:

W DAVID STEPHENS
P O BOX 444
LUFKIN, TX 75902

JOHNNY E BARNES
PO BOX 523
SAN AUGUSTINE, TX 75972

/s/ Lloyd Kraus

Lloyd Kraus